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Legal 1
12/10/1983

Regulation
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CLAIMS (Tort)

Recission: Confidential Funds Regulation 10.7, Claims.

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Class. Changed To:	TS S G
Auth.:	HR 10-2
Date:	11-30-78
By:	31

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1. Purpose. The purpose of this regulation is to prescribe Agency responsibilities and policies, delegate authorities and assign responsibilities for the settlement of (1) claims for personal injury or property damage under the Federal Tort Claims Act (60. Stat. 842, Ch. 743, Sections 402-424, as amended, 28 USCA 2672), (2) claims for property damage under the Small Claims Act (42 Stat. 1060, Ch. 17, Sections 1-3, as amended, 31 USC 215-217), and

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[redacted] whereby claims arising from the negligent or wrongful acts or omissions of Agency employees may be considered adjusted, determined, or settled. The provisions of this regulation shall apply to all claims otherwise within its scope, not heretofore adjusted, and supersedes all previous notices, instructions, procedures, regulations, and authorities not clearly consistent herewith.

2. Policy. Except as provided at paragraph 4 below, tort claims arising against other than an overt Agency activity, shall be processed, determined and settled in accordance with the normal authorities, procedures and

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b. In those instances where governmental ownership of a vehicle or control of an activity may not be disclosed in the interest of security of operations, claims arising out of the use of such vehicle or operation of such activity, are for handling in the name of the activity or by the insurance carrier providing liability coverage for the vehicle, facility or activity concerned.

3. Delegation of Authority for Adjudication and Settlement of Claim.

a. The Comptroller is hereby authorized to approve the settlement of all claims cognizable under the Federal Tort Claims Act (60 Stat. 842, Ch. 743, Sections 402-424, as amended, 28 USCA 2672) or the Small Claims Act (42 Stat. 1060, Ch. 17, Sections 1-3, as amended, 31 USCA 215-217),

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The approval or disapproval,

in whole or in part, of any claim by the approving authority constitutes final action in the case so far as the Agency is concerned and no further review in the Agency may be obtained. The exercise of Agency authority will be governed by the following criteria:

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settlement of claims and reimbursement for expenses incurred

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4. Interim Procedure.

- a. Where the procedures set forth at 2 above have not been previously established, and prior to the establishment of such procedure, the security of operations requires internal processing, determination and settlement of a claim by the Agency, the claim will be forwarded from the activity or station, through the interested division and the Security Office for appropriate recommendation, to the approving authority for approval. Upon approval, payments authorized by the Comptroller shall be charged to funds available to the project or activity concerned.

b. Where, in the opinion of the Station Chief or the Chief of Activity concerned, the security of operations will not admit delay in payment occasioned by Headquarters processing, as set forth immediately above, and payment from station or activity funds, or by the employee, is approved by the Station Chief or Chief of Activity, final approval of the funds expended as an expense occasioned by the security of operations shall be accomplished in accordance with the procedures established in sub-paragraph a. above.

SUBPART A - GENERAL PROVISIONS

5. Definitions.

As used in this regulation:

- a. The word "Director" refers to the Director of the Central Intelligence Agency.
- b. The word "Agency" refers to the Central Intelligence Agency, its offices, divisions, bureaus and activities.
- c. The words "Chief of Station" refer to the Chiefs of overseas areas or installations who report directly to Headquarters.
- d. The words "Chief of Activity" refer to the senior person responsible at the time directly to Headquarters or to the Chief of Station.
- e. The words "General Counsel" refer to the General Counsel of the Central Intelligence Agency, or his designee.
- f. The word "Comptroller" refers to the Comptroller of the Central Intelligence Agency, or his designee.
- g. The words "Chief of Transportation" refer to the Chief, Transportation Division, Logistics Office.

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h. The word "employee" includes officers and employees of the Central Intelligence Agency, and persons acting on behalf of the Agency on Agency business, temporarily or permanently in the service of the Agency, with or without compensation.

i. The words "approving authority" refer to the Comptroller or the approving official of such other Agency or department of the Federal Government as may be designated pursuant to this regulation for the processing and settlement of claims on behalf of the Agency.

6. Claims Against the Federal Government.

a. Action by Claimant. Claims against the Federal Government for damage to or loss of property, or for personal injury or death may be presented by the individual or firm sustaining injury or damages in his or its own right, by a duly-authorized agent or legal representative, or by an attorney. The claim, if filed by an agent or legal representative, must show the title or capacity of the person presenting the claim and must be accompanied by evidence of such authority.

b. Form of Claim. Claims should be submitted by presenting, in duplicate, a statement in writing setting forth: the claimant's name and address; the amount of the claim; the detailed facts and circumstances surrounding the accident or incident; the date and the place; the property and persons involved; the nature and extent of the damage, loss, or injury; and the name of the person or activity which was the cause or occasion thereof, if known. Where damage of property is involved, there should be

a statement as to the ownership of the property, whether liens exist thereon, and, if so, the nature of and amount of the lien and the names and addresses of the lien-holders. If the loss is covered by any insurance, there should be a statement thereof; and if, under the terms of the insurance contract, the insurer is subrogated in whole or in part to the claim of the insured, the insurer should be made a party to the claim. The claimant may, if he desires, file a brief with his claim setting forth the law or other arguments in support of his claim. In cases involving several claims arising from a single accident or incident, individual claims should be filed. (See also, paragraph 6 e. (6) below).

c. Evidence to be submitted by claimant.

(1) General. The amount claimed for damage to or loss of property or for personal injury or death should be substantiated by competent evidence. All statements or estimates required to be submitted by the following subparagraph should, if possible, be by disinterested competent witnesses, and, in the case of property, preferably reputable dealers or persons familiar with the type of property damaged. Such statements and estimates should be certified as just and correct. If payment has been made, itemized receipts evidencing such payment should be submitted.

(2) Damage to personal property. In support of claims for damage to personal property which has been or can be economically repaired, the claimant should submit an itemized estimate of the cost of repairs. If the property is not economically repairable,

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a statement as to depreciation in value should be included; or

if the property is lost or destroyed, the value of the property at the time of loss or destruction should be stated, together with the date of acquisition and the purchase price.

(3) Personal Injury. In support of claims for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(4) Damage to real property. In support of claims for damage to land, trees, buildings, fences, and other improvements, and similar property, the claimant should submit an itemized receipt, if payment has been made, or an itemized signed statement or estimate of the cost of repairs. If the property is not economically repairable, a statement as to its value both before and after the accident should be included. If the damages to improvements can be readily and fairly valued apart from the damage to the land, the damage to such improvements should be stated separately from the damage to the land. The value of such improvements at the time of loss or destruction should be stated, as well as the date the improvements were made and the original cost of such improvements.

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(5) Damage to crops. In support of claims for damage to crops, the claimant should submit an itemized signed statement showing the number of acres, or other unit measure, of the crops damaged, the normal yield per unit, the gross amount which would have been realized from such normal yield and an estimate of the costs of cultivating, harvesting, and marketing such crops. If the crop is one which need not be planted each year, the diminution in value of the land, beyond the damage to the current year's crop should also be stated.

(6) Claims of subrogees and lienholders. The rights of subrogees OR lienholders will be determined according to the law of the jurisdiction in which the accident or incident occurred.

(7) Signatures. The claim and all other papers requiring the signature of the claimant should be in affidavit form signed by the claimant personally or by a duly-authorized agent or legal representative. Where the claim is covered by insurance in whole or in part and the contract of insurance contains a provision for the subrogation of the insurance company to the rights of the insured, the claim should also be signed by the insurance company as one of the claimants in accordance with paragraph (b) of this section.

(8) False claims. Section 35 (A) of the Criminal Code (18 USC 287) imposes a fine of not more than \$10,000 and imprisonment of not more than five years, or both, for presenting false claims against the Government. A civil penalty or forfeiture of \$2,000 plus double the amount of damages sustained by the United States is provided for presenting false or fraudulent claims (see 31 USC 231).

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a. Place of Filing Claims.

(1) Claims arising from overt Agency activities.

(a) Claims arising from the use of vehicles registered to the Central Intelligence Agency should be submitted to the Chief of Transportation, Central Intelligence Agency, 2430 "E" Street, N. W., Washington 25, D. C.

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(c) All claims other than as set forth at (a) and (b) above, arising from overt Agency activities, should be submitted to the Claims Branch, Office of the Comptroller, Central Intelligence Agency, 2430 "E" Street, N. W., Washington 25, D. C.

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e. Standard Forms. Standard forms developed by the Interdepartmental Tort Claims Committee and the Federal Safety Council, and promulgated by Circular Number A-5, Bureau of the Budget, for use where practicable by all Federal Departments and establishments, for reporting accidents and processing claims, are contained in Appendix 1 to this regulation and are designated and to be used as follows:

(1) Operator's Report of Motor Vehicle Accident (Standard Form 91, Revised) is to be prepared at the time and on the scene of the accident insofar as possible regardless of the extent of injury or damage. When feasible, blank forms are to be carried in each Government operated motor vehicle.

(2) Investigation Report of Motor Vehicle Accident (Standard Form 91A, Revised) is to be prepared as soon as possible after the accident by the person investigating the accident.

(3) Supervisor's Report of Accident (Standard Form 92) applies to accidents other than those involving motor vehicles or aircraft and is to be prepared as soon as possible after the accident by the supervisor of Government work in which there is injury to Federal personnel or damage to Federal property, or optionally in contract operations involving non-Federal personnel or property, one form to be used for each injured person.

(4) Report of Accident Other Than Motor Vehicle (Standard Form 92A) applies to accidents other than those involving motor vehicles or aircraft and is to be prepared as soon as possible after the accident by the person in charge of the premises or activity in which the accident occurred, with aircraft accidents to be reported on forms prescribed by the Civil Aeronautics Board or other appropriate authority.

(5) Statement of Witness (Standard Form 94, Revised) is to be prepared by persons having witnessed the accident.

is to be prepared by or on behalf of the person having sustained the injury or damage.

f. Action by Approving Authority.

a. Claims processed within the Agency are approved and paid, or disapproved, in whole or in part, by the Comptroller after transmittal to him with recommendations, by the head of the office, division, bureau, or activity out of whose activities the accident or incident arose. The Medical Office and other components of the Agency will provide the Comptroller with appropriate advice upon request. Prior to approval and payment of any claim by the Comptroller, he will determine, with the advice of General Counsel, whether the claim properly falls within his authority under this regulation.

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g. Acceptance of Settlement by Claimant.

(1) The acceptance of the settlement from the Federal Government by the claimant shall be final and conclusive on the claimant, and constitutes a complete release by the claimant of any claim against the Government and against the employee of the Government whose act or

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omission gave rise to the claim by reason of the same subject matter.

7. Claims by the Federal Government. Upon the recommendation of the appropriate Board of Survey under [redacted] claims for damage to or loss of Government property arising out of the negligence of a private individual shall be forwarded to the approving authority for appropriate action under 31 U.S.C. 71. 25X1A

SUBPART B - FEDERAL TORT CLAIMS ACT

8. The Federal Tort Claims Act (60 Stat. 842, Ch. 743, Sections 402-424, as amended, 28 USC 2672) conferred upon the head of each Federal Agency, or his designee, acting on behalf of the United States, authority to ascertain, adjust, determine, and settle certain claims against the United States, for money only, accruing on and after January 1, 1945.

9. Allowable Claims. Claims are payable by the Agency under the Federal Tort Claims Act and the pertinent provisions of this regulation, on account of damage to or loss of property or on account of personal injury, where the total amount of the claim does not exceed \$1,000, caused by the negligent or wrongful act or omission of any employee of the Agency while acting within the scope of his Office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred.

The claimant's remedy against the Government, if any, in such cases is by suit against the United States in the United States District Court for the District wherein the act or omission complained of occurred, including the United States District Court for the Territories and possessions of the United States.

10. Exclusions. As provided in Section 421 of the Federal Tort Claims Act (28 USC 2680), claims, among others, not payable under the Act and the pertinent provisions of this regulation include:
 - a. Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.
 - b. Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.
 - c. Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading-with-the Enemy Act, as amended, sections 1-31 of Title 50, Appendix USC.
 - d. Any claims for damages caused by the imposition or establishment of a quarantine by the United States.

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- e. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.
- f. Any claim arising in a foreign country.

11. Statute of Limitations. A tort claim against the United States is forever barred unless action is begun within/two (2) years after such claim accrues, or unless, if it is a claim not exceeding \$1,000, it is presented in writing to the appropriate Federal agency within two (2) years after such claim accrues. If a claim not exceeding \$1,000 has been presented in writing within that period of time, the Act provides that suit thereon shall not be barred until the expiration of a period of six (6) months after either the date of withdrawal of such claim from the agency or the date of mailing notice by the approving authority of final disposition of the claim.

12. Payment of Claims.

- a. When an award is made by the approving authority on a claim processed within the Agency, the file on the case shall be transmitted to the Comptroller, for payment out of funds appropriated or to be appropriated for the purpose. Such claims under the Federal Tort Claims Act shall be paid in accordance with the provisions of General Regulations No. 110, General Accounting Office, February 12, 1947.
- b. When an award under the Federal Tort Claims Act is made by such other instrumentality of the Government as may be provided for under the provisions of this regulation, the appropriate file on the case

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together with the claim for reimbursement by such other instrumentality of the Government, for expenditures made in handling, processing and negotiating settlement of a claim under the Federal Tort Claims Act, shall be forwarded by the agency component designated in the exchange of correspondence, to the Comptroller, for reimbursement. Such claims for reimbursement shall be paid by transfer of funds under the authority granted the Agency by Section 6 (a) of the Central Intelligence Act of 1949, 50 USC 403 f.

13. Withdrawal of Claim. A claimant may, in accordance with the provisions of Section 410 (b) of the Federal Tort Claims Act, withdraw his claim from consideration upon fifteen (15) days' notice in writing.
14. Attorneys' Fees. In accordance with Section 422 of the Federal Tort Claims Act, reasonable attorneys' fees may be paid out of, but not in addition to, the amount of the award or settlement. If the award or settlement is \$500 or less, reasonable attorneys' fees, but not in excess of \$50 may be allowed. If the award is \$500 or more, reasonable attorneys' fees, but not in excess of ten per cent (10%) of the amount of the award or settlement, may be allowed. Attorneys' fees under this paragraph may be fixed only on written request of either the claimant or his attorney.
15. Questions of Law. Questions of reasonable care, scope of employment, proximate cause, joint tort-feasors, contributory negligence, negligence per se, subrogation, the allowances of damages for pain and suffering, and other questions of law will be determined by the law of the place where the accident or incident occurred.

a. General. When an employee causes injury or damage to another person while working within the scope of his employment the injured party has a choice of looking to the employee or to the Government for redress. Since there is no doubt of the Government's ability to pay any judgment which may be obtained, the injured party normally looks to the Government under the provisions of the Federal Tort Claims Act. Under the Federal Tort Claims Act, as set forth above, a judgment or administrative award by the Government bars the injured party from then proceeding against the Government employee.

b. Payment of Judgment or Settlement. In the event of a suit against the employee as an individual, payment of the judgment, or settlement, is the personal responsibility of the employee and is not subject to reimbursement from Agency appropriations. As a matter of grace, relief may be afforded through congressional action. (45 Stat. 413, c. 334, 31 USCA 236.)

d. Defense Against Suits. Department of Justice Circular No. 4122, dated 11 May 1950, sets forth the policy of the Department of Justice in the instance of a suit against the employee in his individual capacity. It is there provided:

"It has long been the general policy of the Department to afford counsel and representation to Government employees and servicemen who are sued civilly or charged with violation of local or State criminal laws as a result of the performance of their official duties. The amenability of the United States to suit for the torts of its employees and of members of the Armed Forces (28 USCA 2674) is an additional reason for the continuation and effectuation of this policy."

SUBPART C - SMALL CLAIMS ACT

17. Small Claims Act. The act of December 28, 1922 (42 Stat., 1060, 31 USC 215-217), the so-called "Small Claims Act", authorized the head of each department and establishment to consider, ascertain, adjust, and determine claims of \$1,000 or less for damage to, or loss of, privately owned property caused by the negligence of any officer or employee of the Government acting within the scope of his employment. The Federal Tort Claims Act superseded the Small Claims Act with respect to claims that are allowable under the Federal Tort Claims Act. However, with respect to claims that are not allowable under the Federal Tort Claims Act, for example, claims arising in foreign countries, such claims are considered still allowable under the Small Claims Act.

18. Allowable Claims.

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activity, under the authority of the Small Claims Act and the pertinent provisions of this regulation in the amount of \$1,000 or less, for damage to, or loss of, privately owned property caused by

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19. Exclusions.

- a. Claims cognizable under the Federal Tort Claims Act are not cognizable under the Small Claims Act.
- b. Claims for property damage in excess of \$1,000.
- c. Claims based on personal injury or death.

20. Statute of Limitations. No claim will be considered by the Agency under the authority of the Small Claims Act and the pertinent provisions of this regulation unless presented within one (1) year from the date of accrual of said claim.

21. Payment of Claim. Claims payable in the name of any overt activity of the Agency, upon approval in whole or in part, shall be forwarded to the Comptroller for forwarding to the Bureau of the Budget for inclusion in an appropriation bill. After enactment of the bill by the Congress, the Comptroller shall arrange for payment.